

APR 16 2019

Law Office of Jack Silver

708 Gravenstein Hwy. North, # 407, Sebastopol, CA 95472-2808
Phone 707-528-8175 Email: JSilverEnvironmental@gmail.com



Via Certified Mailing – Return Receipt

April 10, 2018

Jason Dodge, General Manager
Central Coast Winemaking and Operations
Constellation Brands, Inc.
207 High Point Drive, #100
Victor, NY 14564

Tiffanie De Liberty, Sr. Vice President
General Counsel, Chief Compliance Officer
Wine and Spirits Division
Constellation Brands, Inc.
207 High Point Drive, # 100
Victor, NY 14564

Head of Operations/Managing Agent
CBUSO Gonzales Winery
800 South Alta Street
Gonzales, California 93926

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)

Dear Mr. Dodge, Ms. De Liberty, Head of Operations and Managing Agent:

NOTICE OF ALLEGED VIOLATIONS

This Notice is provided on behalf of California River Watch (“River Watch”) in regard to violations of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1251 *et seq.*, that River Watch believes are occurring at the winery owned and operated by Constellation Brands, Inc. (“Winery”) located at 800 South Alta Street in Gonzales, California. Notice is being sent to you as the responsible owners, operators, and managers of the Winery and real property. This Notice addresses the violations of the CWA, including violation of the new terms of the General California Industrial Storm Water Permit, and the unlawful discharge of pollutants from the Winery indirectly into the Salinas River.

CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States unless such discharge is in compliance with various enumerated sections of the Act. Among other things, Section 301(a) prohibits discharges not authorized by, or in violation of, the terms of an individual National Pollutant Discharge Elimination System (“NPDES”) permit or a general NPDES permit issued pursuant to CWA § 402(p), 33 U.S.C. § 1342. CWA § 402(p), 33 U.S.C. § 1342(p), establishes a framework for regulating storm water discharges under the NPDES program. States with approved NPDES permitting programs are authorized under this section to regulate storm water discharges through permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all storm water dischargers. Pursuant to CWA § 402, the Administrator of the U.S. Environmental Protection Agency (“EPA”) has authorized California’s State Water Resources Control Board (“SWRCB”) to issue NPDES permits including general NPDES permits in California.

The SWRCB elected to issue a statewide general permit for industrial discharges and issued NPDES Permit No. CAS000001, SWRCB Order No. 92-12-DWQ (the “General Permit”) on or about November 19, 1991, modified it on or about September 17, 1992, reissued it on or about April 17, 1997, and amended it significantly on April 1, 2014 (effective July 1, 2015), pursuant to CWA § 402(p). In order to discharge storm water lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained an individual NPDES permit and complied with its terms.

CWA § 505(b) requires a citizen to give notice of the intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act. Notice must be given to the alleged violator, the EPA, and the state in which the violations occur. As required by the CWA, this Notice provides notice of the violations that have occurred, and continue to occur at the Winery. Consequently, Constellation Brands, Inc. and CBUSO Gonzales Winery, (referred to collectively hereafter in this Notice as the “Discharger”) is placed on formal notice by River Watch that after the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, NPDES permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, CWA § 301(a), § 402(p), and § 505(a)(1), as well as the failure to comply with requirements set forth in the California Code of Federal Regulations and the Central Coast Regional Water Quality Control Board (“RWQCB”) Water Quality Control Plan or “Basin Plan.”

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

1. The Specific Standard, Limitation, or Order Alleged to Have Been Violated.

To comply with this requirement, River Watch notices the Discharger of ongoing violations of the substantive and procedural requirements of CWA § 402(p) and violations of NPDES Permit No. CAS000001, SWRCB Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ and Order

No. 2014-0057-DWQ (the “General Permit”) relating to operations taking place at the Winery.

The Discharger, rather than seeking coverage under an individual NPDES permit, filed a Notice of Intent (“NOI”) agreeing to comply with the terms and conditions of the General Permit. The SWRCB approved the NOI on or about April 07, 1992 and the Discharger is assigned Waste Discharger Identification (“WDID”) number 3 271005425. River Watch, on the basis of eye-witness reports and records publicly available, and/or records in the possession and control of the Discharger, contends that in the continuing operations taking place at the Winery, the Discharger has failed and is failing to comply with the strict terms and conditions of the General Permit – specifically the requirements governing sampling and analysis, the foundation upon which the Discharger can prepare and implement effective Best Management Practices (“BMPs”) in its Storm Water Pollution Prevention Plan (“SWPPP”) for the Winery, ensuring the elimination of all non-authorized storm water discharges.

Compliance with these General Permit requirements is central to the effectiveness of the General Permit program. River Watch alleges the Discharger has failed and is failing to comply with the General Permit annual reporting requirements for reporting years 2015-2016, 2016-2017 and 2017-2018. The General Permit in effect beginning July 1, 2015 (Order No. 2014-0057-DWQ), revised significantly the reporting requirements for industrial facilities such as the Winery. Under the new General Permit, the Discharger is required to comply with all of the following:

1. “Collect and analyze storm water samples from two (2) Qualifying Storm Events (“QSEs”) within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30)” (*see* General Permit Section XI.B.2).

River Watch, following review of the SWRCB’s SMARTs reporting database, alleges the Discharger failed to comply with this requirement by failing to sample and analyze for the required two (2) samples for the first half of the 2017-2018 Annual Reporting Year.¹

2. “Analyze all collected samples for the following parameters: “(a) Total suspended solids (TSS) and oil and grease (O&G); (b) pH ...; (c) Additional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment ...” (*see* General Permit § XI.B.6.a.-c.).

¹ The Discharger’s 2017-2018 Annual Report, certified by General Manager Jason Dodge, states the Discharger failed to obtain the 2 samples during the first half of the reporting year (Question #3), with the explanation that “The first half of the reporting year did not have any Qualifying Storm Events..” A review of daily rainfall totals charted by the Monterey Regional Airport Website identifies Qualifying Storm Events during this period.

River Watch, following review of the “Analytical Reports” of the storm water samples reported by the Discharger for the Winery, alleges the Discharger fails to reveal monitoring and analysis of the full range of pollutants required by the General Permit. The Reports provide sampling results for Oil and Grease, Total Suspended Solids, and pH, but fail to provide sampling results from the zinc and copper resulting from transportation activities at the Winery; and critically the “additional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of industrial pollutant identified in the pollutant source assessment ...” (General Permit Section XI.B.6.c). In its June, 2015 SWPPP, the Discharger identifies a broad range of “industrial materials” that should be identified as “potential pollutant sources”: Citric Acid, Potassium Bitartrate, Malic Acid, Tartaric Acid, Di-Ammonium Phosphate, Yeasts, Bentonite, Micro Essentials, Enzymes, Tannings, Crème of Tartar, Carbon (Fining Agent), Potassium Meta Bisulfite, Arabinol, Potassium Carbonate, Glycol, Carbon Dioxide, Nitrogen Dioxide, Sulfur Dioxide, Potassium Hydroxide, Sodium percarbonate, Chlorine Dioxide, Hydrogen Peroxide, Phosphoric Acid, (see SWPPP section 5)... . River Watch alleges the Discharger’s failure to provide full sampling results for all of these additional parameters is a violation of the General Permit.

2. The Activity Alleged to Constitute a Violation.

Full compliance with the mandates of the General Permit is not a mere statutory exercise. Gonzales, California is an important wine cultivation area.

The Salinas River is the Central Coast’s largest river and has the fourth largest watershed in California, flowing 170 miles from the mountains in southern San Luis Obispo County northward to Monterey Bay. It supplies the water for central coast cities from San Luis Obispo to Salinas as well as one of the most productive agricultural valleys in the United States. The Salinas River is designated by the SWRCB as one of the most critical watersheds in California due to degrading habitats, exportation, over-use and non-point pollution impacts on water quality. The Salinas River is home to one of California’s most threatened steelhead populations. The Salinas River is listed as impaired under CWA § 303(d) for *Escherichia Coli* (*E. coli*), fecal coliform, pesticides, pH, temperature and turbidity and unknown toxicity. CWA § 303(d) HUC-10 subwatersheds listings for the Salinas River include ammonia (unionized), chloride, chlorpyrifos, diazinon, dieldrin, dissolved oxygen, enterococcus, nitrate, nutrients, PCBs, sodium, electrical conductivity, DDD, total dissolved solids, chlordane, toxaphene, *E. coli*, fecal coliform, pesticides, pH, temperature, turbidity, and unknown toxicity. Failing to care for this critical environment as alleged in this Notice is a violation not only of law, but an abrogation of the trust we demand of landowners.

The Winery is classified on the NOI as SIC Code 2084 (“Wines, Brandy and Brandy Spirits”), trigger monitoring and sampling for the full range of mandated and “additional parameters” listed above. Industrial operations at the Winery are conducted both indoors and outdoors where they are subject to rain events. Because there is no public record of an SWRCB or RWQCB exemption from the collecting and analyzing of the range of pollutants identified in sections 4 and 5 of the SWPPP, and without implementing the full range of required sampling and analysis, there is no accurate measure by which to determine whether required BMPs under General Permit Section X are both implemented at the Winery and effective to ensure no unlawful

discharge(s) of the pollutants identified above from the Winery discharge to the Gonzales Slough which leads to the Salinas River – both waters of the United States. This concern for effective storm water pollution control extends to the following:

The Winery's process wastewater system consists of process water drain inlets located within the Tank Farm, in the Canopy Covered Storage Area, the Barrel Warehouse, within and around the Red Cellar Building and White Cellar Area, and around the Grape Crush Pad and Pomace Accumulation Pad. The process drain inlets flow to an on-site collection sump (identified in Figure 3 of the SWPPP) and are then pumped to off-site ponds located approximately 2 miles from the site for treatment and are used for irrigation. BMPs in Section 6.1 - 6.4 and section 7.0 of the SWPPP are not detailed sufficiently to determine whether the ponds are lined or unlined, or whether they have sufficient capacity to contain all the process wastewater prior to treatment. Detailed BMPS are not seen in the SWPPP for the conveyance system of process wastewater from the sump to the ponds.

The "erosion and sediment control" identified in Section 6.5 in the current SWPPP is not detailed sufficiently to determine whether the roadways used for the trucking of supplies to, from, and within the Winery are constructed and maintained to properly control storm water discharges from the Winery.

Note that in addition to the pollution controls set forth in the General Permit, the RWQCB has established water quality standards applicable to facilities such as the Winery. The Basin Plan includes both a narrative toxicity standard and a narrative oil and grease standard, providing that "[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses." The Basin Plan establishes limits on metals, solvents, pesticides, and other hydrocarbons.

3. The Person or Persons Responsible for the Alleged Violation.

The entity responsible for the alleged violations is, Constellation Brands, Inc. and CBUSO Gonzales Winery, referred to in this Notice as the Discharger.

4. The Location of the Alleged Violation.

The location of the various violations is the permanent address of the Winery at 800 South Alta Street in Gonzales, California, including the waters of the Gonzales Slough and the Salinas River – both waters of the United States.

5. The Date or Dates of Violation or a Reasonable Range of Dates During Which the Alleged Activity Occurred.

The range of dates covered by this Notice is from July 1, 2015 to April 2, 2019. River Watch will from time to time update this Notice to include all violations which occur after the range of dates covered by this Notice. Some of the violations are continuous in nature, therefore each day

constitutes a violation.

6. The Full Name, Address, and Telephone Number of the Person Giving Notice.

The entity giving this Notice is California River Watch, an Internal Revenue Code § 501(c)(3) nonprofit, public benefit corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California. River Watch's mailing address is 290 South Main Street, #817, Sebastopol, California 95472. River Watch is dedicated to protecting, enhancing and helping to restore surface and ground waters of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and to educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be directed to:

Jack Silver Esq. - Tel. (707) 528-8175
Law Office of Jack Silver
Jerry Bernhaut, Esq. - Tel. (707) 595-1852
708 Gravenstein Hwy. No. # 407
Sebastopol, CA 95472
jsilverEnvironmental@gmail.com
j3bernhaut@gmail.com

REMEDIAL MEASURES REQUESTED

River Watch believes that implementation of the following remedial measures are necessary in order to bring the Discharger into compliance with the CWA and reduce the biological impacts from its non-compliance upon public health and the environment surrounding the Winery:

1. Prohibition of the discharge of pollutants including, but not limited to:
 - a. pH, total suspended solids, total organic carbon, or oil & grease (the standard pollutants); and
 - b. all "Potential Pollutant Sources" listed in sections 4.0 and 5.0 in the Discharger's current SWPPP for the Winery.
2. Preparation and submission to the RWQCB of a "Reasonable Potential Analysis" for the Winery and its industrial operations.
3. Preparation of further updates to the Discharger's June, 2015 SWPPP, Revised June, 2018, for the Winery that include, but are not limited to, additional BMPs necessary to address any violations of the General Permit identified by required sampling and analysis.

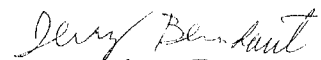
CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community and may use the affected watershed for recreation, sports, fishing, swimming, hiking, photography, and nature walks. The members' health, use, and enjoyment of this natural resource is specifically impaired by the Discharger's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$54,833.00 per day/per violation pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1-19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch strongly encourages the Discharger to contact counsel for River Watch within **20 days** after receipt of this Notice to: (1) initiate a discussion regarding the allegations detailed in this Notice, and (2) set a date for a site visit to the Winery. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating the Discharger is in compliance with the strict terms and conditions of the General Permit, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,


Jerry Bernhaut, Esq.

JB:lm

Service List

Andrew Wheeler, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N. W.
Washington, D.C. 20460

✓ Michael Stoker, Regional Administrator
U.S. Environmental Protection Agency
Pacific Southwest, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Eileen Sobeck, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

CT Corporation System, Registered Agent
Constellation Brands, Inc.
Constellation Brands US Operations, Inc.
818 W. Seventh Street, # 930
Los Angeles, CA 90017